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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ISMAHAN ISMAIL,

11 Plaintiff,

12 v.

13 AMAZON.COM,

14 Defendant.

CASE NO. C16-1682JLR

ORDER ON MOTION FOR BILL
OF COSTS

15 **I. INTRODUCTION**

16 Before the court is Defendant Amazon.com's ("Amazon") motion for bill of costs.
17 (Mot. (Dkt. # 51).) Plaintiff Ismahan Ismail did not respond to the motion. (*See* Dkt.)
18 The court has considered the motion, the relevant portions of the record, and the
19 applicable law. Being fully advised, the court denies the motion for the reasons set forth
20 below.

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II. BACKGROUND

This case arose from Ms. Ismail’s employment at Amazon’s Global Security Command Center in Phoenix, Arizona. (Am. Compl. (Dkt. # 22) ¶¶ 4.1-4.2.) Ms. Ismail filed suit on October 28, 2016 (*see* IFP Mot. (Dkt. # 1)) and alleged claims under (1) Title VII of the Civil Rights Act of 1964 for disparate treatment based on her race and religion, for a hostile work environment based on her religion, and for retaliation; (2) 42 U.S.C. § 1981 based on racial discrimination and retaliation; and (3) the Arizona Civil Rights Act (“ACRA”), Ariz. Rev. Stat. § 41-1461, *et seq.*, based on racial and religious discrimination and retaliation. (*See* Am. Compl. ¶¶ 5.1-5.15.) The court permitted Ms. Ismail to proceed *in forma pauperis* (“IFP”). (*See* 10/31/16 Order (Dkt. # 2).)

On June 5, 2018, the court granted Amazon’s motion for summary judgment and dismissed Ms. Ismail’s claims with prejudice. (6/5/18 Order (Dkt. # 47).) The next day, Amazon moved for a bill of costs in the amount of \$4,015.82. (*See* Mot.) That motion is now before the court.

III. ANALYSIS

Federal Rule of Civil Procedure 54(d)(1) states that costs “should be allowed to the prevailing party” unless a statute, other rule of civil procedure, or a court order states otherwise. Fed. R. Civ. P. 54(d)(1). The rule “establishes a rebuttable presumption that the prevailing party will be awarded its taxable costs,” but “also vests discretion in the district court to refuse to do so.” *Ofeldt v. Nevada*, No. 3:10-cv-00420-LRH-VPC, 2010 WL 4607016, at *2 (D. Nev. Nov. 5, 2010) (citing *Ass’n of Mexican-Am. Educators v. California*, 231 F.3d 572, 591 (9th Cir. 2000) (en banc)). The court may deny costs

1 because of “(1) the substantial public importance of the case, (2) the closeness and
2 difficulty of the issues in the case, (3) the chilling effect on future similar actions, (4) the
3 plaintiff’s limited financial resources, and (5) the economic disparity between the
4 parties.” *Escriba v. Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1247-48 (9th Cir. 2014).
5 All five factors need not weigh against imposing costs for the court to deny a motion.
6 *See Draper v. Rosario*, 836 F.3d 1072, 1087 (9th Cir. 2016). “[T]he losing party [must]
7 demonstrate why the costs should not be awarded.” *Stanley v. Univ. of S. Cal.*, 178 F.3d
8 1069, 1079 (9th Cir. 1999). If the court denies costs, it must “give reasons” for that
9 decision. *Ass’n of Mexican-Am. Educators*, 231 F.3d at 593.

10 Although Ms. Ismail has not responded to the motion, the court finds it
11 appropriate to consider the factors articulated in *Escriba v. Foster Poultry Farms, Inc.*
12 743 F.3d at 1247-48, because Ms. Ismail raised her indigency earlier in the case (*see*
13 *generally* IFP Mot.; Mot. to Appoint (Dkt. # 12)). In Ms. Ismail’s IFP motion, she
14 indicated that she had not been employed since May 9, 2015, and that when she was
15 employed, she had a net monthly salary of \$750.00. (*See* IFP Mot. at 1.) She further
16 stated that she had negative funds in her bank accounts and had become homeless. (*Id.* at
17 2-3.) Court-appointed counsel also represented Ms. Ismail because she had no means to
18 hire an attorney. (*See* Mot. to Appoint at 1.) Thus, Ms. Ismail has no means of paying
19 the costs Amazon requests. *Cf. Stanley*, 178 F.3d at 1080 (stating that a court may
20 properly deny costs when a plaintiff “would be rendered indigent should she be forced to
21 pay” costs). In addition, there is a vast financial disparity between the parties: Ms.
22 Ismail has been unemployed for over three years, whereas Amazon is a financially

1 successful corporation. (*Compare* IFP Mot. at 1-3, with 2d Answer (Dkt. # 23) ¶ 2.2
2 (stating that Amazon’s affiliated companies employ over 200,000 people worldwide and
3 that Amazon is one of the top 100 revenue-generating companies in the world)); *see also*
4 *Escriba*, 743 F.3d at 1249 (stating that the district court did not err in denying costs based
5 in part on the economic disparity between the parties). Furthermore, requiring an
6 indigent plaintiff to pay thousands of dollars in costs could chill future employment
7 actions based on alleged racial and religious discrimination—actions which are important
8 to the public interest. *Id.* (“[E]ven modest costs can discourage potential
9 plaintiffs . . . who earn low wages.”); *cf. Draper*, 836 F.3d at 1088 (stating that
10 “[i]ndividual Eighth Amendment cases are important for safeguarding the rights and
11 safety of prisoners” and holding that the district court abused its discretion in taxing costs
12 of \$3,018.35 against the prisoner plaintiff). Although the case did not necessarily involve
13 difficult questions, the other factors favor Ms. Ismail. *Cf. Draper*, 836 F.3d at 1087
14 (stating that IFP status alone does not exempt a plaintiff from paying costs and should be
15 considered “in the context of the record as a whole”). Therefore, the court denies
16 Amazon’s motion for costs.

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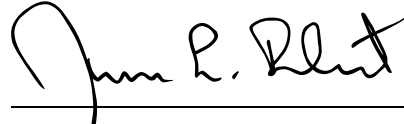
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1 **IV. CONCLUSION**

2 For the foregoing reasons, the court DENIES Amazon's motion for bill of costs
3 (Dkt. # 51).

4 Dated this 27th day of June, 2018.

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7 JAMES L. ROBART
8 United States District Judge
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